2-04 MEE 1 - Example 1

1. Mary has standing to challenge Testator's will, but Grandchild does not have standing.

Under Missouri law, a party has standing to challenge a will or will provision if that party would benefit if the will or will provision was held invalid.

Here, Mary and Grandchild are both challenging the validity of Testator's will as a whole. If the will is held invalid, then Testator's estate will not pass through her will. Instead, it will pass through intestacy.

Testator died survived only by her only child Mary and by her grandchildren and great-grandchildren, each a child and grandchild of Mary. Under Missouri intestacy laws, when an individual dies intestate and without a surviving spouse, the individual's estate will pass per capita with a right of representation to the decedent's children.

Here, Testator has only one child, Mary. Thus, Mary would be entitled to Testator's entire estate if the will were held invalid. Since Mary stands to benefit from the will contest, Mary has standing to challenge the will.

Grandchild, on the other hand, would not receive any portion of Testator's estate if the will were held invalid. Since Grandchild does not stand to benefit from the will contest, Grandchid does not have standing to challenge the will.

2.

A person with standing to challenge the will may contest Testator's will on the theories that the will was improperly executed, that testator lacked testamentary capacity, or that Testator suffered from an insane delusion. A court is likely to rule in personal representative Bank's favor on all three counts and uphold the validity of the will.

Improper Will Execution. Governing law requires that a will is properly executed if it is signed by Testator in the presence of two witnesses after having declared the instrument to be her will and requested the witnesses to act in such capacity.

Here, someone might challenge the will's execution because it is unclear whether Testator declared the instrument to be her will, or whether she specifically requested the two witnesses to attest to her signature of the will. It appears instead that the witnesses signed

the will after Testator signed but without any comment or direction from Testator.

The Bank can defend proper execution of the will on the grounds that Testator acknowledged the will with the words "You bet it is" in response to attorney's question identifying the will. The Bank can also argue that the two witnesses either were directed to attest to the will prior to execution, if not after, or that Testator implicitly directed the witnesses to sign when she consented to their signatures in her presence, and at the direction of her attorney.

Testamentary Capacity. One with standing might also challenge the will by arguing that Testator lacked testamentary capacity to execute a will. Testamentary capacity requires a testator's knowledge of the value of her property and assets, of her natural family relations, of the disposition of property in the absence of a will, and of the choices made in the will to dispose of that property.

Here, one challenging the will would argue that Testator in her older age could not remember her stockbroker or stocks, her street address, or even remember that she had a great-grandchild.

However, Bank can show more convincingly that Testator knew the value of her estate, and knew that she had previously provided for her child and grandchildren with large gifts. This knowledge confirms that Testator was aware of her estate and those who might share in that estate. Such knowledge is more important than whether Testator remembered her street address or the names of her stocks in determining whether Testator had the capacity to make a will. The fact that Testator did not remember she had a great-granchild is not material either, since Testator was aware of the great-grandchild's mother and grandmother. For these reasons, a court will find that Testator had testamentary capacity to dispose of her property through her will.

Insane Delusion. Finally, it is possible that one with standing to challenge Testator's will could argue that it was the product of an insane delusion. This line of analysis requires more facts about "Charity," the person or organization to which Testator left all of her estate. If it turns out Charity was not a real person, or was an imagined generic organization that performs charitable deeds, then the will provision could be challenged as an insane delusion. However, since the will was signed in the presence of Testator's attorney, it is more likely that Charity is a real person or defined organization, and then the court would not strike down the gift to Charity on this ground.

2-04 MEE 1 - Example 2

1. Standing to Contest Will. Mary had standing to contest the will, but grandchild does not. At issue is the determination of heirship, such that a person would take property if the will failed. In Missouri, a person has standing to contest a will if that person would take an interest in the decedent's property through the laws of intestate succession. If the person would not take by intestate succession, then the person has no interest in the will and will not qualify as a real party in interest. Here, the Missouri laws of intestate succession will determine whether eithe Mary and/or grandchild would take by intestate succession if the will is invalid. In Missouiri, if the decedent is survived by a spouse and children, then the spouse takes 1/2 and the children take 1/2. In small estates, the spouse will take the first $20,000 plus 1/2 the remaining property in order to insure that in small estates most property goesto the surviving spouse. However, decedent did not leave a surviving spouse. When there is no surviving spouse, the property goes to the surviving children in equal shares. Here, decedent was a survived by only one child (Mary),thus Mary would take the entire intestate property. Therefore, Mary has standing to contest the will. Grandchild, on the otherhand, would not receive any property by the laws of intestate succession. Therefore, the grandchild does not have standing to contest the will.

2. Will Contest Issues. The will contestant may argue lack of testamentary capacity and lack of formal requisites for will. The Bank can defend upon the ground that Mary and Grandchild cannot carry their burden of proof under the facts and that Grandchild lacks standing. At issue are the formal requisite for a valid will and standing. Will are governed by the Statute of Will, which requires that wills be in writing and attended by certain formal requisite. Additionally,the testator must have had testamentary capacity at the time of exeucting the will. Testamentary capacity means that the testator was of sufficient mental competency such that she knew the nature and extent of her property and the nature objects of her bounty. Testator must also have understood the nature of the act of executing a will and must have intended to make a testamentary disposition of her property. Testamentary capacity is a relatively low mental capacity. Here, the will contestants will point out the Testator was elderly, age 85, that she was suffering from cancer and taking medications which made it very difficult for her to remember facts, that she couldnot remember various items such as the name of her stock broker, the names of the stock she owned, the name of her great grandchild, or the addresses of her homes. On the otherhand, the Bank would point out that the Testator stated she wanted everything to go to Charity (which shows testamentary intent), that she stated her family had enough (which shows she knew the objects of her bounty), she knew the total value of her estate (naming each item is not necessary), and she could name all her relatives save the

youngest. Mary had already made substantial gifts to her family so it is not likely she forgot about them. On balance, the court would hold that Testator had testamentary capacity. Second, the will contestant would argue that there was not formal execution because although the testator did publish the will (telling people it was her will) she did not request that they sign as witnesses. However, the request for witnesses to sign will be implied from the circumstances. Everyone was assembly with Testator and attorney. The testator published the will and executed it. Then the witnesses executed it. Under these circumstances, the request to sign will be implied. There are no facts suggesting that the witnesses did not sign in the presence of the testatory, the facts suggest that they did. Therefore, the court would find due execution and uphold the will on that ground. Mary could not argue she is an omitted child because the will was made in 1995, and by 2002 she already has children. So, Mary must have already been born when the will was executed.

2-04 MEE 1 Example 3

Question 1

Mary has standing to challenge the Will but Grandchild does not. Under Missouri law, an individual has standing to challenge a Will if that individual stands to gain (i.e., take from the decedent) should the will contest prove valid. In this case, because the Will leaves everything to charity, if it is invalidated Testator's property will pass to her heirs at law in accordance with the Missouri statutes on intestate succession. Under those statutes, a decedent's heirs includes her surviving spouse and issue. If a decedent leaves no surviving spouse but leaves a child or children, all the decedent's probate property passes to that child or children. Thus, Mary has standing to challenge the Will because she will take Testator's probate estate if the Will contest succeeds. Grandchild, however, takes nothing, if the contest succeeds and would have only a were expectancy that he or she might receive some or all of the property at Mary's death. Thus, Grandchild does not have standing.

Question 2

Theories

Mary may challenge the Will on the basis that Testator lacked testamentary capacity and on the basis that Testator's execution of the will was not proper.

Lack of Testamentary Capacity

A Testator has testamentary capacity if, at the time the testator executed her Will, the testator appreciated the nature and significance of her act, the nature and extent of her property, the natural objects of her bounty, and the intended beneficiaries of her conduct. In this case, Mary may argue that Testator's inability to remember names of her stocks, addresses of her residences, and the name of her great-grandchild mean that she did not appreciate the nature and extent of her property or all the natural objects of her bounty. The bank will defend on the basis that Testator knew how much property she owned and that her inability to recall some very specific identifying details does not deprive her of the requisite appreciation of her property. Similarly, the fact that Testator knows and appreciates who all but her most remote burial descendants are and that she has made extensive prior provisions (gifts) for them will counter Mary's argument that Testator did not understand or appreciate the natural objects of her bounty. Testator's express statements make it clear who she intended to have her property and why. On balance, the bank is more likely to win this argument.

Faulty Execution

Mary will argue that Testator did not strictly comply with the statute on execution because she did not expressly request the witnesses to sign as such. The bank will defend on the basis that Testator impliedly requested the witnesses to sign because she did not object to their presence or question their purpose in signing. Again, bank is likely to win because Testator's acute awareness of the significance of the signing will imply that she requested the witnesses to sign.

2-04 MEE 2 - Example 1

1. Sally against Bill. Sally has no rights against Bill. At issue is the liability of a maker where the draft has been stolen after acceptance by a bank. The certified check is negotiable paper, and hence Article III of the Uniform Commercial Code controls the rights of the parties. Here, Bill paid Sally with a check (draft) drawn on his account at Local Bank and payable to her order. A check payable to the Sally of Sally is a negotiable draft. It is "order" paper because it is payable to the order of Sally, rather than to bearer or cash, in which case it would be bearer paper. The type of paper is important as that dictates how the paper can be negoiated. After Bill issued the order paper, Local Bank "certified" it. That means that Local Bank "accepted" the check and is now liable on the check. This is fair because at the time Local Bank accepted the check, it would have debited Bill's account to cover the check, even though it had not yet been presented for payment. When Local Bank accetped the check, Bill as issuer was discharged. Therefore, Sally has no rights agaisnt Bill.

2. Sally against the banks. Sally may recover against either Local Bank or Depository Bank under a convesion theory. At issue is whether banks who pay a forged instrument have any defense to the person not in possession but with rights of enforcement. Again, Article III controls the rights of the parties. Thief cannot pass good title to anyone. Upon the theft of the paper, the change of title wasa broken and thief cannot "negotiate" the paper to anyone. Because the check was order paper, negotiation requires Sally to endorce the check and deliver possession to the next party. Here, the check was stolen and Sally did not endorse the check. Therefore, Theif is not a holder. Sally is not a holder because she lost possession. But she is a person not in possession with the right to enforce the check. Depository Bank converted Sally's check when it paid the check over a forged signature. Depository Bank is liable to Sally for damages, which would be the face amount of the check. Depository Bank is not holder in due course because Thief could not negotiate the check to Depository Bank, even though Depository Bank gave value and presumable took in good faith and without notice of the theft. Local Bank is also liable to Sally for the same reason. It paid the check over a forged endorsement. Local BAnk cannot become a holder is due course for the same reason Depository Bank could not.

3. Local Bank against Depository Bank. If Local Bank pays SAlly, then Local Bank becomes subrogated to the rights of Sally against Depository BAnk. (Local BAnk could also recover against Depository Bank because Depository Bank breached the transfer warranties.) However, if Local BAnk does pay Sally, then Local Bank becomes subrogated to the rights of Sally with respect to the check. This means that Local Bank now has whatever rights Sally had to recover

agasint Depository Bank. Because Sally could recover against Depository BAnk as explained above, Local Bank may recover under a theory of subrogation. Also, Local Bank could also recover in its own right for breach of the transfer warranties. A person who transfers a negotiable instrument makes several implies warranties, including that all prior endorsements are genuine, that the item is properly payable, that title is good, and that he knows of no defenses. Here, the first three transfer warranties were breached because the item was not properly payable, an endorsement was forged, and there was not good title to the check.

2-04 MEE 2 - Example 2

1) The issue is, what rights does sally have against Bill. This is an issue of commercial paper. It is governed by Art. 3 of the UCC.

The rule is that documents must first be negotiable. Negotiability exists when unconditional, pay to order or bearer, with a fixed date, fixed amount and no undertakings. Here, it appears that the check given to Sally was negotiable.

Next you must determine if Sally was a holder. To become a holder, you must have possession through negotiation. Here, Sally acquired the order paper from Bill for the sale of the vehicle. Sally is a holder.

To determine what rights you have, you must next determine if Sally was a holder in Due Course. The rule is that a holder in Due Course is one that is a holder, for value, with no notice and in good faith and not subject to any defenses. Defenses are private and real. An HDC will not be subject to private (contract) defenses.

You must next determine the rights of thief. Thief never gained holder status of the instrument because he took it illegality. Moreover, the instrument was order paper and NOT indorsed. Thus, Thief was not a HDC.

Here, Bill gave Sally a certified check. Upon completion of this act, he was dissolved from liability provided the check was good. Thief stole the check from Sally, endorsed it and both banks honored it. Because Bill has no more liability, Sally will have no rights of recovery against Bill.

2) Sally will have an action against banks. The issue is, does sally have an action against the banks that honored the stolen forged check. The rule is that, as because discussed above, Sally had become an HDC. She held the order paper subject only to real defenses. Defense such a fraud, forgery, alteration, illegality, duress or statute of limitations claims. Order paper remains such until there is a valid endorsement and then it becomes bearer paper. Even though a person might not still have the note in their possession, they have the right to enforce if they are a non-holder due to theft or destruction.

Here, Sally never indorsed the note. It was order paper when Thief acquired it and he forged her signature onto the document. The banks made good on the note. Sally would have a claim against either bank because of her HDC status and the forgery.

Thus Sally would have an action and right of recovery against the banks.

3) Local Bank would have a right of collection against depositary bank. The issue is, would local bank be able to collect from depositary bank if Sally was able to collect from them.

Here, local issued the certified check and warranted the validity. If Mary is able to collect from local bank, that bank will in turn be able to collect from depository bank. Depository bank was liable in disbursing to a non-holder and honered the funds from the forged instrument. Depository bank must seek Thief for recovery of the funds.

Thus, local bank may collect from Depository bank.

2-04 MEE 2 - Example 3

1. Sally has no rights against Bill. These are commercial paper transactions controlled by Article 3 of the UCC.

Under Art. 3, a certified check is treated like cash. Thus, when Bill gave Sally a certified check, it suspended the underlying obligation. Because the underlying obligation (used car purchase) has been satisfied, Bill owes no obligation to Sally.

2. Sally can sue both Depositary Bank and Local Bank in conversion. (Of course, she could sue theif, too, but he is long gone.)

Here, the thief stole Sally's check and forged the signature. The check was made out to pay to the order of Sally and was, thus, order paper. When the theif stole the check and forged Sally's name, he did not properly negotiate the check. To negotiate a check, one must be a proper holder. Here, the only proper holder is Sally because, as order paper, the check was only properly payable to her. The theif converted the check and passed it to Depositary Bank. Depositary Bank, although it gave value in good faith without notice of any defenses, is not a proper holder because the theif was not a proper holder. Similarly, Depositary Bank then transferred the converted check to Local Bank; Local Bank converted the check and paid Depositary Bank.

Niether bank can claim that they are protected under the Holder in Due Course Rule. The Rule holds that a proper holder who gives value in good faith without notice of certain defenses will take free of any personal defenses. Two reasons the rule is not applicable here: (1) neither bank was a proper holder due to the initial forgery and (2) forgery is a real defense.

Sally can sue either Depositary Bank or Local Bank in conversion. She was the proper holder and the check was only properly payable to her. However, she cannot sue both banks. Also, she is limited to one recovery.

NOTE: Depository Bank does not qualify as a holder in due course because he was not a proper holder, However, if Sally had signed the check, she would have converted it to bearer paper. If Thief had stolen bearer paper, he would have been a proper holder because possession defines a holder of bearer paper.

3. Local Bank could sue Depository Bank on both a presentment warranty and a transfer warranty.

When a holder presents an instrument for payment, he warranties that he is (1) entitled to payment, (2) that all signatures are valid, (3) that the instrument is not altered, and (4) that there are no defenses or claims on the instrument. Here, Depositary Bank breached the presentment warranty. Although Depositary Bank did not do so intentionally, intent is not required. Local Bank will be able to recover from Depositary Bank. The transferor warranty is a guarantee that all transfers have been valid. Because of the initial forgery, none of the transfers have been valid and the warranty has been breached. Again, intent is not required and Local Bank will recover from Depositary Bank.

Depositary Bank could then recover from Theif (after all, Thief was Depositary's customer). Theif could be sued both on the presentment warranty and on the transferor warranty. The transferor warranty is a guarantee that all transfers have been valid. Again, because of the initial forgery, none of the transfers have been valid and the warranty has been breached.

2-04 MEE 3 - Example 1

1. The issue is what types of property are divisible at divorce which is an issue of marital property vs. separate property. The general rule is that all property acquired after marriage is presumed to be marital, thus, subject to division at dissolution.

a. Real estate business - A commercial business is subject to division as marital property UNLESS it is a professional business with value based on the professional's reputation. A real estate business should be considered a commercial business in that extensive educational requirements are not mandated. Therefore, since the business began after their marriage, it would be deemed marital property subject to division. It is irrelevant that title to the business is solely in Harold's name.

b. Pension - Division of a pension turns on the type and purpose for which it was established. Since the facts do not indicate otherwise, a retirement (or non-disability) pension will be assumed. Since contributions were made to the pension during the marriage, presumably from earnings Harold earned in the RE business, then the pension is marital and subject to division.

c. Family home - With no facts to the contrary, the home is marital and its value subject to division. Since the children are adults, the court will not consider one of the party's need to maintain the home for the children's sake.

d. Joint bank acct. - Will be subject to division as marital property in that it was funded by Harold's earnings during marriage, thus, subject to division. It does not matter how the account is presently titled for division purposes in a dissolution.

e. Stock - Regardless of the title on the stock certificates, they would be Wendy's separate property. Where one inherits solely, even during the marriage, such property is separate, thus, not subject to division.

2. Dissipation of assets and marital misconduct are factors to be considered in certain aspects of a dissolution proceeding. However, adultery should have little impact upon division of property whereby the court is statutorily charged to divide marital property and forbidden to divide separate property.

Dissipation of assets, on the other hand, may be a factor the court would consider. The gifts to Harold's "friend" dissipated assets otherwise available to the marital estate. As such, the court could rule the home sold or impose a constructive trust for the marital estate's benefit.

3. Wendy will argue that she quit her job in order to raise the children, care for the marital home, and to entertain Harold's clients. These sacrifices are contributions to the marital estate, therefore, she stands on an equal footing with Harold in regard to property division. After all, the court is charged with the responsibility of making a "just division," which does not necessarily mean 50–50.

Harold will argue that even though Wendy quit her job to be a stay-at-home mom, she failed to make contributions to the marital estate. Wendy was admittedly a poor housekeeper, requiring weekly visits from a cleaning company. She didn't cook much, a job normally affiliated with a homemaker. Further, Wendy did not contribute adequately to rearing the children in that the couple had a live-in nanny.

2-04 MEE 3 - Example 2

In MO all property acquired during the marriage is presumed to be marital property subject to the following exception.

1. Separate property acquired before marriage and brought to the marriage but not treated or acted upon as marital (joint efforts etc.).

2. Any separate gift or inheritance, including gifts from a spouse.

3. Some separate property is determined by contract (prenup agreement)

All marital property is subject to division at divorce. It is not a 50/50 division but the court will make a "just" division and all marital property is considered.

1. Real Estate business - marital property - it doesn't matter that husband is sole owner - title does not determine whether marital.

2. Pension - Marital property. In MO pensions are subject to division at divorce. Only exception – Missouri Teachers pension is always – separate property.

3. Family home – marital

4. Bank acct – marital

5. Stock – separate property for Wendy because she inherited (income from stock would be marital)

2. In the Court's division of marital property the court will consider
    1. The conduct of the spouses.
    2. The comparative contributions of the spouses.
    3. The separate property of each spouse – that is additional financial resources each has.
    4. Custodial situation – not an issue here – but preference to give home to custodial parent.

In considering conduct, the court does not give great weight to adultery so affair might not matter that much. Court does consider economic waste by a spouse so gifts to girl friend of an expensive nature including a home will be considered as a drain of marital property (the same as if it were e.g. gambling).

3. Because the Court will look at the spouses contributions to marriage, Wendy can make an argument that her services as a full time mother and housekeeper were valuable.

Harold will make an argument that because she had a full time nanny, brought in meals etc. – she is not entitled to much consideration for these services – Also she only occasionally helped w/entertaining.

Harold will argue that he was the sole money earner and the marriages financial status was due to his efforts. This does not mean he gets everything but there will be consideration for this in the property division.

2-04 MEE 3 - Example 3

1.

The real estate business, Harold's pension, the jointly titled family home, and the joint bank account are subject to division upon dissolution of marriage. The stock inherited by Wendy is not subject to division.

Real estate business. Harold started his real estate business 25 years ago, shortly after marrying Wendy. A business that is started during a marriage is marital property, including any goodwill, any income, and any increase in value from that business, all results from marital labor, and is subject to division upon divorce. To the extent the business itself cannot be divided, Wendy is entitled to a just amount representing the value of the business. Wendy also may point out that she occassionally entertained Harold's business guests in the home, thus contributing her own marital labor to the real estate business.

Harold's pension. Harold began contributing to his private pension with his real estate business, which began during his marriage to Wendy. All of Harold's contributions to the pension have been made during the marriage. A retirement pension is subject to division upon divorce as marital property to the extent it was earned during the marriage. Here, the entire pension was earned (and vested) during the marriage, and so is subject to a just division.

Jointly titled family home. The jointly titled family home was acquired with funds Harold earned during the marriage. The funds Harold earned during the marriage constituted marital property. The source of funds rule requires that property remains marital property to the extent marital funds are used to purchase the property. Since only martial funds were used to purchase the house, the house is therefore wholly marital property, and subject to a just division. The fact that the home is titled in both Wendy's and Harold's name confirms this characterization of the home as marital property.

Joint bank account. The jointly titled bank account, like the jointly titled home, is also subject to a just division as martial property, to the extent that it contains marital funds. Here, it does not appear that Harold commingled any separate funds with the marital funds. Moreoever, the joint titling of the bank account creates a presumption that the parties intended to tranmute any separate funds into joint funds through retitling. Thus, the joint bank account is marital property subject to a just division.

Stock. The stock inherited by Wendy shortly after she married Harold and held in her own name is not subject to division at divorce.

Property or assets inherited by one party remain the separate property of that party, even if inherited during the marriage. Wendy did not transmute the stock into marital property by retitling the stock in both of the parties' names, so it appears that the stock remains her separate property.

2.

Missouri is a modified no-fault state. A divorce will be granted upon a showing that the marriage is irretrievably broken, or upon a showing of certain grounds for divorce by either party. One of these grounds is adultery. In addition to serving as a grounds for divorce, a court will consider adultery as one factor in determining the just division of marital property. The court will consider both Harold's affair and the gifts he made to Carol while having the affair that were purchased with marital funds.

Harold's affair. The court will consider Harold's affair in determining the division of marital property. Although many other factors, such as the parties' respective marital contributions and their separate property, will be considered in determining a just division of the property, the court may also consider that the marriage is dissolving due in part to Harold's extra-marital affair, and award a larger portion of the marital property to Wendy in the intersts of justice.

Gifts to Carol. The court will certainly consider the gifts that Harold made to Carol in determining the division of marital property. Since all of Harold's income appears to have been from the real estate business, it appears that Harold's gifts to Carold were purchased with marital funds. The court will offset Harold's purchase of expensive gifts to Carol and the purchase of a home in Carol's name by giving Wendy a share of the remaining marital property equal to and offsetting that amount. Wendy will thus be able to recover the gifts that Harold gave to Carol when the court determines a proper and just allocation of marital property.

3.

In determining the division of marital property in Missouri, a court will consider both parties' marital contributions over the course of the marriage, including contributions as homemaker and mother. The court will consider these contributions in making a just division of marital property.

Harold's argument. Harold can argue that Wendy did not make a significant contribution to the marriage in her homemaking and maternal roles. Wendy was not a good housekeeper, such that the home eventually required a third party cleaning service. Wendy was not a good cook, preferring instead to pick up food from local restaurants.

Wendy required the additional assistance of a live-in nanny in order to raise the couple's two children. Harold can argue that Wendy did not contribute as much as she could have in her household and mothering roles, but instead required outside help to accomplish the management of the household.

Wendy's argument. Wendy can argue that she made significant contributions to the household by raising the couple's two children. Many families require the assistance of a nanny before children are of school age. Wendy looked out for the best interests of the children by ensuring that they always would be properly supervised. Moreoever, Wendy can argue that she managed the household affairs by arranging for the cleaning service and bringing in meals: Wendy was a skilled household manager, even if she was not as skilled in the labor of cooking and cleaning.

A court in Missouri will consider both Harold's and Wendy's arguments in determining a just division of property, in addition to the other contributions made by both parties to the marriage.

2-04 MEE 4 - Example 1

1.

Husband and Wife can join their respective personal injury and loss-of-consortium claims in a single action in the U.S. District Court. Joinder of claims of separate parties in federal court requires that the claims of each party derive from the same transaction or occurrence, and involve common issues of fact or law.

Here, Husband's personal injury claim and Wife's loss of consortium claim both derive from the same occurrence: the motor vehicle accident which injured Husband on a highway in State X. Both also involve common issues of fact and law: recovery for Husband or for Wife depends on whether the United States is found to have acted negligently under the Federal Tort Claims Act. Thus, the actions may be joined in a single action in U.S. District Court.

2.

Husband and Wife can join their respective claims against the United States and Motorist, as defendants, in a single acgtion in the U.S. district court. Joinder of parties in federal court requires that the claims against each party derive from the same transaction or occurrence.

Here, the federal tort claim against the United States and the state tort claim against Motorist both derive from the same occurrence: the motor vehicle accident which injured Husband on a highway in State X. Thus, the actions may be joined in a single action in U.S. District Court.

3.

The U.S. district court does have subject matter jurisdiction over the state law claims of Husband and Wife against Motorist. The court has primary jurisdiction over the federal claim against the United States, and supplementary jurisdiction over the state claim against Motorist.

Primary jurisdiction for United States. Federal courts are courts of limited jurisdiction. A plaintiff must show proper federal jurisdiction for each claim brought to federal court.

Here, the U.S. District Court has primary jurisdiction over the claim brought against the United States under federal "arising under" jurisdiction. This claim arises under a federal law, the Fedral Tort Claims Act, appearing on the face of plaintiff's complaint. The amount in controversey is immaterial for arising under jurisdiction.

Supplementary jurisdiction for Motorist. The claims brought by Husband and Wife against Motorist are state law claims, and so do not arise under federal law.

Moreover, the court does not have primary jurisdiction under diversity jurisdiction. Diversity jurisdiction requires complete diversity of citizenship and an amount in controversey exceeding $75,000. Here, Husband and Wife were citizens of State Y when the tort accrued, and Motorist was at all times a citizen of State X. This diversity of citizenship may have been lost when Husband and Wife changed their domicile to State X. Even if it was not, the total damages claimed by Husband and Wife are $55,000, which is well short of the federal amount in controversey threshold for federal primary jurisdiction. Thus, the court does not have primary jurisdiction over claims brought against Motorist.

The federal court does have supplementary jurisidction over Husband's and Wife's claims against Motorist. Where a court has primary jurisdiction over a claim, it may also have supplementary jurisdiction over claims that derive from a common nucleus of operative fact.

Here, the U.S. District Court has primary jurisdiction under its arising under jurisdiction for claims brought against the United States under the Federal Tort Claims Act. The state tort claims against Motorist derive from a common nucleus of operative fact: the events leading up to the accident which caused Husband's injuries. Therefore, the U.S. District Court has subject matter jurisdiction to here the state claims against Motorist along with the federal claims againt the United States.

2-04 MEE 4 - Example 2

1. Husband and Wife may join thier claims in a single action. The issue is whether two parties may join claims in a single suit.

Under federal law, a party may join any claims he or she wants so long as there is jurisdiction over the claim. In addition, any party can be joined so long as thier claim arises out of the same transaction or occurrance or same series of transactions or occurrance.

Here, husband and wife have joined as parties, each asserting a claim against the defendants. The claim husband asserts is for personal injury resulting from the automobile accident. Wife's claim is for loss of consortium due to husband's injuries. Thus, it dervies from the same occurrance. Therefore, assuming there is jurisdiction over the claims, husband and wife can join as plaintiffs and assert thier seperate claims against defendants.

2. Husband and Wife may bring thier claims against the US and Motorist in the same action. The issue here is the joinder of indispensible parties.

Under the federal law, any party can be joined so long as thier claim arises out of the same transaction or occurrance or same series of transactions or occurrance. Further, a party should be joined if it is an indispensible party. A indispensible party is one whose absence is so prejudicial that a full and fair adjusication/relief cannot be had and is no hurtful that the case should be dismissed.

Here, both the US and Motorist were in some way involved with the car accident which caused the plaintiffs' injuries. Thus, the claims against both parties arise out if the same occurrance. Moreover, Both could be in someway responsible for the car accident. The US as a result of its driver slamming on his brakes to avoid hitting the truck in front of him (because he was drowsy and drove too close to the truck in front of him) and Motorist for swerving in reaction to the truck slamming its brakes. Thus, both, or either, could be held liable to plaintiffs for their injury. Because both defendants had a role in causing the accident, it is reasonable to conclude the absence of the other is prejudicial. It is also possible the plaintiffs would not nbe able to get full relief without suing both defendants together. Further, as the suit arose out of the same transaction, failure to join the two defendants could result in multiple law suits. Therefore, assuming there is personal jurisdiction over both parties (which there is), it was proper to sue both defendants in the same suit.

3. The District Court has jurisdiction over Husband and Wife's state tort law claim. The issue here is whether a federal court has jurisdiction over a state claim when there is no diversity.

Federal courts are courts of limited jurisdiction. Therefore, thery must have jurisdiction over every claim before it. There are three forms of jurisdiction: matters arising under federal law, diversity, and supplemental.

The court has jurisdiction over matters arising under federal law. Matter arise under federal law when it is brought under a federal statute or involves a constitutional question.

The court has diversity jurisdiction when there is complete diversity and the matter in controvery exceeds $75,000. There is complete diversity when there are no defendants who are domiciled (physical presence and intent to remain) in the same state as the plaintiff. Further, I believe the domicile is determined at ther time suit is filed (as opposed to when the cause of action arose).

Supplemental jurisdiction comes into play when there are two claims. One of the claims will fall under the courts "arising under federal law" jurisdiction, and the court will not have jurisdcition over the second claim. When the court has jnurisdiction over the claim because it arises under federal law, the court may extend supplemental jurisdiction over the second claim.

Here, Husband and Wife's state tort claim obviously does not arise under federal law. The claim also does not meet the requirements for diversity jurisdiction. The amount is controversy is only $55,000. Thus, it is over $20,000 short. Moreover, there is not complete diversity. The plaintiffs now live in State X, the domicile of Motorist. Although Husband and Wife were residents of State Y when the cause of action occurred, domicile is evaluated at the time suit is filed.

Husband and Wife's claims, however, can be heard by the federal court through supplemental jurisdiction. Husband and Wife's claims against the US are brought under a federal statute - the Federal Tort Claim Act. Thus, it "arises out of federal law." Because one claim arises under federal law, the court is free to extend its jurisdiction to the state tort claim. Thus, there is subject matter jurisdiction over the stater tort claim.

2-04 MEE 4 - Example 3

Answer to question 4

1. Yes. The Federal Rules of Civil Procedure (FRCP) regarding joinder of parties allow more than one plaintiff to join together to assert claims arising out of the same transaction or occurrence or series of transactions or occurrences. Because Husband (H) and Wife (W) both suffered their injuries from the same traffic accident, they may join their claims into one action.

2. Yes. The rule for permissive joinder of parties in the FRCP allow plaintiffs to join all claims against all defendants which arise out of the same transaction or occurrence or series of transactions or occurrences. This rule furthers the federal courts' policy of judicial efficiency by allowing the court to determine the respective rights of all of the parties in one consolidated action. Because H and W's claims against the United States (US) and Motorist (M) all arise out of the same traffic accident, both US and M can be joined as defendants in the same suit.

3. Yes. H and W have asserted a federal question claim against the US under the federal tort claims act. Their related state-law claim against M could be joined under the federal supplemental jurisdiction statute. Ordinarily, the claims by H and W against M would not be allowed in federal court because those claims do not arise under either of the two federal subject-matter jurisdiction statutes, which require that a claim involve either a) a federal question or b) an action between citizens of different states with an amount in controversy of at least $75,000. Here, H and W's claims against M arise under state law, the parties are now all citizens of the same state and H and W are only seeking $55,000, even if their claims were allowed to be aggregated, so none of the independent jurisdictional rules is satisfied. However, federal law allows a court to exercise supplemental jurisdiction over claims which would otherwise have no independent source of federal subject matter jurisdiction, if they nonetheless are so related to the parties' other (federal or diversity-based) claims that they can be said to arise out of a common nucleus of operative fact. Under this rule, and for the same purposes of judicial efficiency discussed above, the court in this case could exercise its supplemental jurisdiction and allow H and W to bring their state-law claims against M, because those claims all arise out of the same traffic accident which give rise to the parties' federal question claims against the US.

2-04 MEE 5 - Example 1

1. Superiority as between Luke and First Bank re Equipment. First Bank has priority on the equipment. At issue is the relative priority between a perfected secured party and a judical lienholder. Because security interests are involved, Article 9 of the Uniform Commercial Code controls the rights of the parties. First, it should be noted that First Bank has a perfected security interest in all of PC's equipment, including after-acquired equipment. For a security interest to exist, First Bank must have given value, PC must have agreed to the security interest in an authorized writing, and PC must have an interest in the collateral. Here, all three are met because First Bank gave value (extended line of credit which apparently was drawn down because PC wanted to borrow more money), PC authenticated the security agreement, and PC had rights in the collateral (PC owned them). In order to perfect the security interst, First Bank was required to file its finanicng statement in the appropriate public office. Because the collateral was equipment (not real estate)the appropriate office was the secretary of state. PC did not need to specifically authorize the filing of the financing statement because it had already specifically authorized the security interest in an authenticated writing. Although the financing statement contained some erroneous matter, it did propertly name the debtor and name the collateral. A general description of "equipment,now owned or hereafter acquired" is sufficient. First Bank need not name specific items of euipment because the purpose of the financing statement is to put other on notice with the expectation that they will make inquire (just as Second Bank did). The priority rules state that a party with a prior perfected security interest takes priority over a judical lien holder.

2. Superiority as Between Luke and First BAnk re Accounts receiveable. Luke has priority on the account receivable. At issue is the relative priority between a judicail lien holder and a non-secured party. Although First Bank's financing statement said it included PC's accounts receivable, that was erroneous. As explained above, a security interest cannot attach unless the debtor agrees to the security interest in an authenticated writing. Here, there is no authenticated writing in which PC agreed so a security interest in their accounts receivable. The mere filing of the finance statement does not create any security interest, it only perfects one that might otherwise exist. So, notwithstanding the erroneous financing statement, First Bank has not security interest in PC's accounts receivable. First Bank is unsecured with respect to the accounts receivable. Luke, on the other hand, is a judicial lienholder. The rules state that a judical lienholder has priority over an unsecured creditor.

3. PC v. First Bank. First BAnk is liable to PC for damages arising out of filing the erroneous financing statement. At issue are the rights and liabilities of creditor under ARticle 9. As explained above, PC implied authorized First Bank to file a financing statement in order to perfect the security interest in PC's equipment. PC did not preview the financing statement and did not authorize that part of the financing statement concerning inventory and accounts receivable. When the mistake was discovered, PC promptly called the error to First Bank's attention and demanded that the financing statement be corrected. First Bank refused to terminate or amend the erroneous financing statement. First Bank should be liable to PC for the consequently and reasonably provable damages for its failure to terminate or amend the financing statement. Here, it appears that PC in facts suffered substantial damages because it was denied a loan from SEcond Bank which would have allowed it to expand and fullfill its contract with City of Eden.

2-04 MEE 5 - Example 2

1. First Bank will have superiority over PC's equipment. A perfected secured creditor will have priority over a judgment lien if it was first in time. To have a perfected security interest, there must be attachment to the collateral and perfection. To attach under the UCC there must be 1) an intent for there to be a security interest which is evidenced by an agreement signed and with a description of collateral or possession 2) the secured party must give value and 3) debtor must have rights in the collateral. Here, there is a security agreement that shows intent of parties to have security interest. First Bank gave PC $100,000 and PC has rights in the equipment it owns. Fist Bank has attached its security interest.

To perfect a security interest the secured party must either file an authenticated finance statement with a description of the collateral in the appropriate filing office or take possession of the collateral. Here, First Bank filed a financing statement in the appropriate office. The financing statement was also authenticated and approved of by PC signing the security agreement. There is no need for filing statement to be signed by debtor. Further, even though the description was wrong to the inventory and accounts receivable, it covered the equipment. Therefore, First Bank had a perfected security interest in PC's equipment in 2002. Since Luke did not get his judgment lien until 2003, First Bank has priority over Luke and a superior claim to the equipment.

2. Luke will have priority over First Bank on the accounts receivable. The issue here is who has priority between an unsecured party and a judgment lien holder. For a party to be secured, there must be an attachment to the collateral. This is done through an agreement, value and debtor's rights as discussed above. Here, the parties did not intend for there to be a security interest on the accounts receivable. Further the description in the security agreement only covers equipment. Therefore there was no attachment and no security interest. A judgment lien holder has priority over a unsecured party. Luke has priority over First Bank in regards to the accounts receivable and a superior claim.

3. PC can claim that because of First Banks negligence in stating the description in the financing statement wrongfully and its refusal to act to change the description – PC was unable to get further financing to expand its business.

Under the UCC, a secured party has a duty to file a correct financing statement. If there is an error, the secured party has a duty to fix the error upon its receiving knowledge of the error or a request from the debtor.

Here First Bank seemed to make an unknowing error in the description of the collateral. But when PC requested that First Bank fix the error, First Bank had a duty to promptly fix the error or be liable to PC for damages.

First Bank refused to fix the error and is liable for any damages that may have incurred because of this error. The damages here may include lost revenue from potential businesses if PC were allowed to gain financing to expand (probably to speculative) or loss on the contracts it already had because it was unable to expand to cover the needs on the contracts.

2-04 MEE 5 - Example 3

1. First Bank, assuming there was valid attachment and perfection. Since this case deals w/a security agreement, it will be governed by Art 9 Secured Transactions. At issue is the priority of a lien creditor versus a secured party. Under Art 9, the general rule is that the first party to file or perfect obtains priority above other secured parties. However, in order to have a valid perfection, the secured party must first attach their security interest (SI) to the collateral. Attachment occurs when (i) the debtor authenticates (signs) a security agreement granting a SI in the collateral in favor of the Secured Party (SP), (ii) describes the collateral; (iii) SP gives value for the collateral; (iv) and the debtor has rights in the collateral. Perfection is done by filing a financing statement in the appropriate state office and attachment.

In this case, PC and First Bank authenticated a SA that granted a SI in all PC's equipment. First Bank gave value (100k) and the collateral was described by the clause; PC took possession of the loan proceeds. The problem arises w/the "signing" requirement. The facts state that PC "authenticated SA" but did not specifically authorize it. Under Art 9, when a debtor authenticates a SA, this automatically authorize the SP to file a financing statement. Therefore First Bank did not need PC's permission to file. Another problem arises w/the description of the collateral. First Bank (SP) erroneously filed a wrong description including inventory and accounts receivable. Under Art 9, this erroneous description will not defeat attachment per se; however the security interest only covers the original agreed upon collateral (i.e. the equipment, now owned; etc.; not the inventory and accounts receivables.

Assuming we have attachment, local bank was the first to file; before Luke obtained his judgment lien and became a lien creditor in 2003. Therefore under the first to file or perfect rule, local bank will have priority (assuming attachment) over lien creditor Luke in the equipment.

2. Luke v. First Bank re: accounts receivable.

Luke will have priority in this situation. At issue is whether an erroneously filed financing statement in the wrong collateral will grant a SP a SI in that collateral. Under Art. 9, a party must have valid attachment and perfection in order to obtain priority among other SP. In this case, Luke has a good argument that there has not been any attachment to the accounts receivable by First Bank. First Bank SA described only "equipment, now owned and after acquired," it did not describe "accounts receivable." The fact the First Bank erroneously included the words "accounts receivable" in the financing statement will not validate attachment and perfection under Art. 9. Under Art. 9, the security agreement, not the financing statement (though it should too) must describe the collateral. The SI only attaches to that collateral or collateral of that type after acquired in our case. That collateral is equipment, not accounts receivable.

Luke obtained a valid judgment and obtained a valid lien against all PC's assets, including accounts receivable. That interest attached when Luke obtained the lien. While Luke may not have perfected his interest by filing the lien, he will still prevail b/c he is secured (his SI has attached) and First Bank is unsecured party re: the accounts receivable. Accordingly, a secured party will have priority over unsecured and Luke will prevail.

3. PC v. First Bank:

PC has claims against First Bank for breach of duty to act in good faith and failing to behave in a commercially reasonable manner. Under Art. 9, a creditor or SP has a duty to act in good faith when

lending money or services to a debtor. In this case, PC has a good argument that First Bank was behaving in bad faith by failing to cure the defects or amend their financing statement after repeated requests from PC. PC, further suffered many losses as a result of First Bank's refusal to amend b/c 2nd Bank refused to grant them their much needed additional financing b/c of 1st Bank's erroneous statement. PC would argue that First Bank had knowledge of the mistake and chose to ignore their request and they suffered financial harm as a result. Furthermore, under Art. 9, secured parties have a duty to act in a commercially reasonable manner when dealing w/the debtors. A breach of this duty may make the SP liable to debtor for damages. PC would argue (and it would be a good argument) that b/c of their inability to secure financing from 2nd Bank, PC could not hire additional employees and ended up breaching an existing K.

Therefore, PC has good arguments for claiming damages against First Bank under UCC.

2-04 MEE 6 - Example 1

1. Randy's statement "I don't want to do this anymore. I am quitting this partnership," assuming it was meant seriously by Randy, had the effect of dissolving the partnership and triggering the wind-down period.

Although Randy and Sandy did not have a written partnership agreement, their business together nonetheless constituted a partnership. Under the UPA as adopted by Missouri, a partnership is an association of two or more persons who share in the management and profits of running a business. Randy and Sandy participated equally in the management of their partnership and shared equally in its profits. Their widget manufacturing company constituted a for-profit enterprise. Thus, Randy and Sandy's relationship is governed by Missouri partnership law.

A partner may leave a partnership by providing notice to all other partners. In this case, Randy provided notice to the only other partner, Sandy. While such notice may have triggered a dissolution of the partnership, it did not trigger an immediate termination of the partnership. Instead, Sandy and Randy were required to wind-down the partnership by finishing any old business, not entering into any new business, paying off all debts, and liquidating assets.

Thus, Randy's statement that he quit the partnership had the effect of triggering the wind-down period for the two-person partnership.

2.

The parternship is bound by the contract entered into by Sandy with Barney. A partnership is bound by contracts entered into by a partner if the partner has authority to enter into the contract. Such authority may be actual, apparent, or by subsequent ratification by the partnership.

Actual Authority. Here, Sandy did not have actual authority to enter into a new contract with Barney. Although Sandy and Barney had been negotiating the widget contract for months, Randy's statement that he was quitting the partnership prior to finalization of the deal triggered a wind-down period for the partnership. During wind-down, no partner has authority to enter into new business on behalf of the partnership without the consent of the partnership. Thus, Sandy lacked actual authority to enter into the contract with Barney.

Apparent Authority. Sandy did have apparent authority to enter into the contract with Barney. Where a principal holds out an agent as having authority to a third party, and the third party reasonably

relies on the appearance of authority, the third party can bind the partnership to an agreement.

Here, it was reasonable for Barney to believe that Sandy, who had been in a parternship with Randy only the previous day, continued to have authority to act on behalf of the partnership. Randy did nothing to dissuade Barney of this notion, even though Randy knew that Sandy and Barney had been negotiating a widget contract for over a month. Instead, Randy took a long term vacation. Since Sandy had apparent authority to act on behalf of the partnership, and since Barney reasonably relied on that apparent authority, the partnership is bound by its contract with Barney.

Ratification. It is possible that even if Sandy were not found to have apparent authority, the partnership would become bound to the contract with Barney through subsequent ratification by Randy. It is likely that Randy, upon returning from his extended vacation and learning of the long-term deal, would agree with his partner's judgment and ratify the deal. This action would bind the partnership even if Sandy lacked actual or apparent authority in the first instance.

3.

Since Sandy made a payment to trade creditors out of her personal funds during the wind-down period of the partnership, Sandy has a right of equal contribution from Randy's personal funds.

Absent an agreement, partners share profits equally in a partnership. They share losses in the same manner as they share profits. Here, Randy and Sandy had an equal share of profits. Losses and debts are thus also shared equally, following the profits. Since Sandy covered all $30,000 of a partnership debt, she can demand half of this in contribution from Randy, or $15,000.

The fact that Randy and Sandy contributed unequally to the partnership's creation does not change this, as Randy will recover this contribution upon final liquidation of the partnership, and can collect from Sandy at that time if he is not able to fully recoup his contribution.

2-04 MEE 6 - Example 2

1. Randy's statement had the effect of dissolving the partnership.

A partnership exists where two or more people agree to co-own a business for profit. Randy and Sandy had an effective general partnership because they agreed to go into business together to sell widgets. Here, Randy and Sandy had no written partnership agreement. Under Missouri law (as well as general partnership law), where there is no set time limit for a partnership, it is a partnership at will. In a partnership at will, any partner can dissolve the partnership at any time (the partnership does not need to end at that time, but it must change with regard to the leaving partner). Here, Randy's announcement effectively dissolved the partnership. At dissolution, partners must wind up the partnership. They should not enter into any new contracts, but should merely finish out the contracts already in existance (see below for more on this).

2. Yes, the partnership is bound by the contract with Barney.

A partnership has an agency-type relationship. The partnership is the principal and the partners are the agents. Partners have a fiduciary relationship to the partnership and to all of the partners. Further, a partner can bind a partnership if it has valid authority.

Authority
A partner can bind the partnership if the partner has valid authority. Actual authority is authority that a partner truly has to bind the partnership. For example, when Sandy was soliciting Barney in the past, she had actual authority to solicit such contracts. However, all actual authority to enter into new contracts was revoked when Randy dissolved the partnership.

However, a partner can still bind a partnership if the partner has apparent authority. Apparent authority exists when a 3rd party reasonably relies on a belief that the partner has actual authority. Here, Barney reasonably believed that Sandy still retained actual authority to enter into the new contract. Barney had no notice that Randy had left the partnership because Sandy did not tell him. Thus, Sandy had apparent authority to bind the partnership, and she did bind the partnership with the contract.

Typically, outgoing partners are not personally liable for contracts entered into after they have left the partnership. To relieve themselves of future liability, the outgoing partner must give notice to the world that he is leaving the partnership. Here, Randy only told Sandy that he was leaving the partnership. To remove such future liability, the partner must give personal notice to parties the

partnership has dealt with in the past and publication notice to the rest of the world. Here, Sandy had been soliciting Barney for some time, so Randy should have given Barney personal notice that he was leaving the partnership. Because he did not give Barney the required notice, Randy is bound on the contract as a partner. (Thus, he is personally liable.)

Sandy's breach of fiduciary duty
At the time Randy dissolved the partnership, Sandy should not have entered into the contract with Barney. Under Missouri law, when a partnership is dissolved, it must be wound-up. In winding up a partnership, the partnership is required to complete all outstanding contracts and only enter into new contracts that are required to maintain the old contracts. Thus, Sandy breached her fiduciary duties to the partnership and to Randy when she entered into the contract with Barney. Sandy will be liable to Randy for the contract with Barney.

3. Sandy can claim a $15,000 contribution for the payment to the trade creditors.

Sandy and Randy had no written partnership agreement. When there is no provision regarding profits and losses, losses are presumed to be shared in the same manner as profits. Here, Randy and Sandy shared the profits equally. Thus, they should share the losses equally. As mentioned above, outgoing partners are not personally liable for debts incurred after leaving the partnership (assuming, of course, proper notice). However, partners remain personally liable for all debts incurred while they were members of the partnership. Thus, simply leaving the partnership did not absolve Randy of his debt with regard to the trade creditors. Randy's portion of the trade creditor debt is $15,000.

NOTE: Randy is also entitled to any profits from the remaining contracts (as well as any losses). Further, Randy may be able to off-set the money he owes Sandy because she will be liable to him for the contract with Barney.

2-04 MEE 6 - Example 3

1. Randy is trying to dissolve the partnership by this statement. Once a partner states that he wants to leave the partnership, all future activity must cease. The partners must wind up the partnership's affairs. It must fulfill all existing contracts and decline to enter into any new contracts. Once Randy made this statement, he and Sandy should have fulfilled the remaining short-term contracts and paid the $30,000 debt to trade creditors. Sandy should not have entered into the contract with Barney.

During the winding up process, the partners must distribute the partnership assets. Outside creditors (like the trade creditors) are paid first. Often inside creditors are paid. No facts exist here about this. Next, partner capital contributions are paid. Then lastly, any remaining profit or surplus is paid.

2. Partners are agents of the partnership and may enter into contracts within the scope of partnership business. Clearly no express authority existed here because Randy expressly told Sandy that the partnership was over. But, the partnership may still be liable due to Sandy's apparent authority. If an agent is cloaked with the appearance of authority and a person contracting with them reasonably relies on that appearance, the principal/partnership is bound. Here, Barney knew that Randy and Sandy were partners. But, he didn't know that the partnership was over. Sandy didn't tell Barney about Randy's departure and entered into a contract on "behalf of the partnership." In this situation, Barney could be said to have reasonably relied on Sandy's appearance of authority. The partnership will thus be bound.

Randy will claim that he should not be bound because Sandy exceeded her authority and Randy had left the partnership. But, partners can still be bound on partnership contracts after the partner has announced an intention to leave. For Randy to have properly protected himself from liability on this new contract, he would have had to have given personal notice to all customers who have dealt with the partnership and must have published general notice to the rest of the world. Here, Randy gave absolutely no notice to anyone. As soon as he said he wanted to leave, he left town on a long vacation. Even though Barney was not entitled to personal notice since he was never a customer, he still needed general notice (such as newspaper publication) before Randy could have been absolved. Overall, both Randy and the partnership will be bound.

3. Sandy can claim a contribution from Randy on the $30,000. There was no written partnership agreement here. In the absence of an agreement, profits are shared equally. In the absence of an agreement, loses are shared like profits. It doesn't matter what the parties' capital contributions are or whether they voted equally on management. This default rule will apply in the absence of an agreement.

The facts do not state that an agreement existed concerning loses. As such, loses are shared equally. Because this $30,000 was a partnership debt before Randy said he was going to dissolve the partnership, he owes his share. If loses are shared equally, Randy will owe Sandy $15,000 for the debt paid to the trade creditors.

Furthermore, it does not matter that Sally used her own funds to pay the full amount owed to the trade creditors. That debt is not obligated to be paid solely from a partnership account. As a general rule, if a partner pays a partnership debt using personal funds, the partnership must refund the money. Of course, this money need not necessarily come from Randy's pocket. If the partnership has money to cover the debt, all $30,000 can come from partnership assets. But, if the partnership has no assets, Sally is treated as an inside creditor and can receive money, even from Randy. Partners are personally liable for partnership debts to the extent that partnership assets cannot satisfy the debt. So, if Sally cannot be paid as an inside creditor, Randy would be forced to pay her $15,000.